IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 72 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RIYA @ LATA W/O MAHESH ISRANI

Versus

MAHESH S/O SUGNOMAL ISRANI

Appearance:

1. Misc.Civil Application No. 72 of 2003

MR AS VAKIL for Petitioner No. 1

MR GD ACHARYA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/07/2003

C.A.V. JUDGEMENT

1. Smt.Riya @ Lata wife of Mahesh Israni, applicant

original opponent has filed this Misc.Civil Application praying for transfer of the Hindu Marriage Petition No.139 of 2001 filed by the opponent - husband Shri Mahesh Sugnomal Israni in the Family Court at Ahmedabad to the Court of Civil Judge (S.D.), Gandhidham and be tried along with Hindu Marriage Petition No.4 of 2001 filed by the applicant.

2. The facts giving rise to this application are as under:

2.1 Smt.Riya - applicant is married to the opponent Shri Mahesh S.Israni and the said marriage was solemnised on 13.3.97 as per the Hindu Customs and rites. The applicant and the opponent thereafter were residing together in the house of opponent at Ahmedabad consisting of father, mother, brother and sister of the opponent. It appears that thereafter difference and dispute arose between the parties and it is a case of the applicant that she was being ill-treated and abused by the family members of the opponent and ultimately she had filed a Hindu Marriage Petition No.4/01 before the court of Civil Judge (S.D.) at Gandhidham for a decree for restitution of conjugal rights against the opponent.

2.2 Thereafter the opponent-husband has filed Hindu Marriage Petition No.139/01 against the applicant wife before the Family Court at Ahmedabad on 28th February, 2001, and prayed for a decree of judicial separation. The applicant has appeared in HMP Suit No.139/01 and has filed her reply dated 18.6.2001 and contested the said suit. The evidence of the opponent has been recorded in this behalf and the opponent has also filed closing purshis.

2.3 Learned advocate further submitted that so far as Gandhidham Court is concerned, the opponent husband has filed reply and the examination-in-chief of the applicant wife is over. In view of the aforesaid aspect the applicant has filed this application for transfer of HMP No.139/2001 from the Family Court at Ahmedabad to Gandhidham Court and also prayed that the HMP No.4/01 be tried alongwith the said suit.

2.4 Learned advocate for the applicant has relied upon Sec.24 of the CPC which provides general power of transfer and withdrawal.

2.4(A) The learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of

Indian Overseas Bank, Madras Vs. Chemical Construction Co. and others reported in AIR 1979 SC 1514 particularly para 18 the Hon'ble Supreme Court has observed as under:

"para.18 Although the exercise of this discretionary power cannot be imprisoned within the strait-jacket of any cast iron formula uniformly applicable to all situations. Yet, certain broad propositions as to what may constitute a ground for transfer can be deduced from judicial decisions. One of them is that where two suits raising common questions of facts and laws between parties common to both the suits, are pending in two different courts, it is generally in the interest of justice to transfer one of those suits to the other forum to be tried by the same Court, with consequent avoidance of multiplicity in the trial of the same issues and the risk of conflicting decisions thereon. The instant case falls squarely within this category."

2.4(B) Learned advocate for the applicant has relied on the judgment of the Hon'ble Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396 particularly para 3 which reads as under:

"para.3 It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

2.5 He has also relied on the judgment of the Madras High Court in the case of K.R.Srinathi Vs. H.Ramakrishnan reported in AIR 1990 Madras 330 particularly para 13 on page 333 which reads as under:

"para.13 The other pivot of attack of the respondent hinges on the ground of convenience, in the sense of the same being considered to be the convenience of both the parties to the proceedings. It is not at all disputed that the respondent is a permanent employee in the BHEL working as a Deputy Manager, Khaperkheda at Nagpur, Maharashtra State and that the petitioner is permanent officer in Bank of India, Bharathiar University Campus, Somnianpalayam, Coimbatore. Yet another undisputed fact is that petitioner is having a tender child of seven months' old. If the proceedings are allowed to be held in the

> Family Court at Madras, both the petitioner and the respondent have to undertake the ordeal, trouble and inconvenience of making a trip to Madras for the respective places of their present abodes due to exigencies of their official positions. One can visualise and imagine the pitiable plight of the petitioner-wife to make such trips to Madras on all the hearing dates before the Family Court, which is imperative in the very nature of the provisions contained in the Act, with the suckling baby in arms. It is of no consequence for the respondent to make the necessary trips for the purpose of attending the hearings of the proceedings to Coimbatore. In this view of the matter, the scales of convenience is more titled in favour of the petitioner rather than that of the respondent. As such, the proceedings pending before the Family Court at Madras deserve to be transferred to a competent Civil Court at Coimbatore."

3. Mr.Acharya, learned advocate for the respondent has strongly objected to the same and stated that there was already proceedings pending before the Family Court at Ahmedabad. Learned advocate further submitted that the respondent - husband has filed first said proceeding and he is serving at Ukai in GEB as a responsible officer and it is not possible for him to obtain leave from his work place and to go to Gandhidham Court in this behalf. He submitted that if the proceedings are transferred from Family Court to Gandhidham Court, the same will be highly inconvenience to him because travelling from Surat to Gandhidham is a long journey and he will have to take long leave in this behalf and due to his key position in the GEB it will not possible for him to take often leave in this behalf.

3.1 He has relied on the following decisions:

(1) Usha George Vs. Koshy George reported in (2000) 10 SCC 95.

(2) Anuradha Dalal Vs. Rohit Dalal reported in (2001) 10 SCC 449.

(3) Sm.Pritikona Banerjee Vs. Shanker Banerjee reported in AIR 1987 Calcutta 269.

3.2 Mr.Acharya, learned advocate for the respondent has also invited my attention to Sec.21 of CPC which provides objections to jurisdiction. Sec.21(2) which

provides as under:

"No objection as to the competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

4. I have considered the submissions made by learned advocate for the applicant wife and also submissions made by Mr.Acharya, learned advocate for the respondent husband in this behalf. I have also considered Section 24 of the CPC which provides for transfer of the case from one court to another court and also judgment of the Madras High Court in the case of K.R.Srinathi (supra) and also judgment of Apex Court in the case of Sumita Singh (supra), Anuradha Dalal (supra) and Usha George (supra) and also the Calcutta High Court judgment in the case of Sm.Pritikona Banerjee (supra). I have also considered the fact that in this case there is already proceeding pending before the Gandhidham Court being H.R.P.Suit No.4/01 for decree for restitution of conjugal rights. I have also considered the fact that wife is a household lady and she is not earning whereas the husband is serving as a officer in the Gujarat Electricity Board, Ukai at Surat.

4.1 In my view the following principle emerges for deciding the authority. The principle which has been laid down has been set out in Code of Civil Procedure by C.K.Thakker, Vol.1 2000 Edition page 569 which reads as under:

"As discussed above, the power of transfer must be exercised with extreme caution and circumspection and in the interest of justice. The court while deciding the question must bear in mind two conflicting interests; (i) as a dominus litis the right of the plaintiff to choose his own forum; and (ii) the power and duty of the court to assure fair trial and dispensation of justice. The paramount consideration would be the requirement of justice. And if the ends of justice demands transfer of a case, the court should not hesitate to act."

5. In view of the aforesaid judgment of the Apex Court, I am of the view that if the proceedings are transferred from Family Court, Ahmedabad to Gandhidham Court, the same will be in the interest of justice. It is no doubt true that the husband will have to travel from Surat to Gandhidham. However, with a view to minimise his inconvenience, I request the learned trial Judge to see that in both the proceedings namely Gandhidham Court case which has been filed by wife and another proceeding which has been transferred from Family Court, Ahmedabad, both are to be kept together and same date may be given so that parties may not find any inconvenience in this behalf. The learned trial Judge is requested to see that both the matters are to be taken up on board and be heard and dispose of at an early date. While considering this I have considered the fact that if a woman is travelled from Gandhidham to Ahmedabad then she will have to travel alone and that will cause inconvenience to the wife both physically as well as financially and therefore this is one of the factor which this Court has considered in this behalf and therefore the Hindu Marriage Petition No.139 of 2001 filed in the Family Court at Ahmedabad is ordered to be transferred to Gandhidham Court in this behalf.

5(A) It may be noted that in this case one suit is filed by wife at Gandhidham being HMP No.4/01 for a decree for restitution of conjugal rights against opponent husband. The wife is residing at Gandhidham and while ordering the HMP No.139/01 filed by husband before Family Court Ahmedabad to be transferred to Gandhidham Court. I have seen only the convenience of the wife in this behalf. I have also considered the judgment of the Apex Court in the case of Indian Overseas Bank (supra) and the principle laid down in CPC under Sec.24. However, there is no question of any doubt creating on the integrity, competence and reputation of a concerned judge of Family Court at Ahmedabad. On that count I have not transferred the case from Family Court to Gandhidham Court. I have only considered the fact that if the case is not transferred from Family Court Ahmedabad to Gandhidham Court, the wife will have to travel alone from Gandhidham to Ahmedabad and that will inconvenience to the wife both physically, mentally as well as financially in this behalf.

6. I hope and trust that the learned trial Judge who takes up both the matter will try to dispose of the said matter within three months i.e. preferably by 31st October, 2003, along with the HMP No.4 of 2001 filed by applicant wife. The HMP No.139/2001 filed by opponent in

Family Court at Ahmedabad and transferred to Gandhidham Court will be renumbered there accordingly.

7. In view of the aforesaid observations and directions, this Misc.Civil Application is disposed of accordingly with no order as to costs. Rule is made absolute.

8. Before I part with the order, I may state that "Manu Smriti mandates that the highest respect and regard must be extended and full protection should be given to women throughout their life". The relevant verse is in Sanskrit language. The English translation of the said words is as follows:

"Women must be honoured and adorned, by their fathers, brothers, husbands and brothers-in-law, who seek their own welfare. [III-55]"

{Re: Quoted from Ancient Indian Law, Eternal values in Manu Smriti by Justice M.Rama Jois, 2002 Edition page 30}

(K.M. Mehta, J.)

syed/